

Subchapter B—Regulations Under the Railroad Unemployment Insurance Act

PART 300—DEFINITIONS

§ 300.1 *Words and phrases.* Except where the language or context indicates otherwise, the terms defined in section 1 of the Act wherever used in this subchapter shall have the meanings assigned to them in that section. (Secs. 1, 12, 52 Stat. 1094, 1107, 53 Stat. 845, 848; 45 U.S.C., Sup., 351, 362) [Board order 39-664, Oct. 24, 1939, effective Oct. 1, 1939; 4 F.R. 4370]

PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

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§ 345.1 *Statutory provisions.* "(a) Every employer shall pay a contribution with respect to having employees in his service, equal to 3 per centum of so much of the compensation as is not in excess of \$300 for any calendar month payable by him to any employee with respect to employment after June 30, 1939; *Provided, however,* That if compensation is payable to an employee by more than

one employer with respect to any such calendar month, the contributions required by this subsection shall apply to not more than \$300 of the aggregate compensation payable to said employee by all said employers with respect to such calendar month, and each such employer shall be liable for that proportion of the contribution with respect to such compensation which the amount payable by him to the employee with respect to such calendar month bears to the aggregate compensation payable to such employee by all employers with respect to such calendar month."

"(g) The contributions required by this Act shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this Act as may be prescribed by regulations of the Board, and shall not be deducted, in whole or in part, from the compensation of employees in the employer's employ. If a contribution required by this Act is not paid when due, there shall be added to the amount payable (except in the case of adjustments made in accordance with the provisions of this Act) interest at the rate of 1 per centum per month or fraction of a month from the date the contribution became due until paid * * *

"(h) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934, insofar as applicable and not inconsistent with the provisions of this Act, shall be applicable with respect to the contributions required by this Act: *Provided, however,* That all authority and functions conferred by or pursuant to such provisions upon any officers or employees of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to the contributions required by this Act, be vested in and exercised by the Board or such officers and employees of the Board as it may designate there-

for.”† (Sec. 8, 52 Stat. 1102; 45 U.S.C., Sup., 358)

†The source of §§ 345.1 to 345.22, inclusive, is Board order 39-664, Railroad Retirement Board, Oct. 24, 1939, effective Oct. 1, 1939; 4 F.R. 4370.

§ 345.2 *Employers' contributions.* (a) Except as provided in paragraph (b) of this section, every employer shall pay a contribution equal to 3 per centum of the amount of compensation payable by such employer to employees with respect to employment on and after July 1, 1939, excluding, however, that part of the compensation which is in excess of \$300 and is payable by the employer to any employee with respect to employment during any one calendar month.

(b) Subject to the regulations with respect to employee representatives, if compensation is payable by more than one employer to an employee with respect to employment during the same calendar month, and if the aggregate compensation payable to such employee by all employers is more than \$300 for the calendar month, then there shall be included in the measure of each such employer's contribution only that proportion of \$300 which the amount payable by him to the employee for the month bears to the aggregate compensation payable to such employee by all employers for that month.*†

*§§ 345.2 to 345.20, inclusive (with the exceptions noted in the text), issued under the authority contained in secs. 8, 12, 52 Stat. 1102, 1107; 45 U.S.C., Sup., 358, 362.

§ 345.4 *Employers' reports of monthly compensation of employees.* Each employer shall continue to file with the Board, in accordance with the requirements of § 250.3, reports of the compensation of each employee, consisting, as heretofore, of

(a) A report of compensation for 3 months, on Form BA-3 (or punched tabulating cards in lieu thereof),

(b) A monthly report of compensation adjustments for 3 months, on Form BA-4,

(c) A quarterly summary of compensation adjustments (carbon copies of the monthly reports of compensation adjustments, filed during the calendar quarter, are acceptable as the quarterly summary of compensation adjustments), and

(d) Summary reports of compensation for the quarter, on Form BA-5.† (Sec. 12, 52 Stat. 1107; 45 U.S.C., Sup., 362)

§ 345.5 *Employers' contribution reports*—(a) *General.* For the period of 3 calendar months ending September 30, 1939, and for each subsequent period of 3 calendar months ending December 31, March 31, June 30 and September 30, respectively, of each year, each employer shall prepare a contribution report, in duplicate, on Form DC-1. Except as otherwise provided by agreement with the Board, each employer is required to file a separate contribution report, and consolidated contribution reports of parent and subsidiary corporations are not permitted.

Contribution reports of employers who are required by State laws to pay compensation on a weekly basis shall with respect to such compensation cover all pay roll weeks, all or the major part of which falls within the period for which the reports are required, except that contributions with respect to compensation earned in one calendar year shall not be reported in another calendar year.

(b) *Compensation to be reported on.* The amount reported on Form BA-5 as the total creditable compensation for the quarter, prior to any additions or subtractions for adjustments, shall be entered on the employer's quarterly contribution report for the corresponding quarter as the amount of creditable compensation from which the contribution payable for that quarter is to be computed.*†

§ 345.6 *Final employers' contribution reports.* Upon termination of employer status, as determined under §§ 202.11 and 202.12, the last contribution report of the employer on Form DC-1 shall be marked “Final contribution report.” Such contribution report shall be filed with the Board on or before the 60th day after the final date for which there is payable compensation with respect to which contribution is required. The period covered by each such contribution report shall be plainly written thereon, indicating the final date for which compensation is payable.

There shall be executed as part of each such final contribution report a

†For source citation, see note to § 345.1.

*For statutory citation, see note to § 345.2.

statement giving the address at which compensation records will be kept and the name of the person keeping the records.*†

§ 345.7 *Execution of employers' contribution reports.* (a) Each contribution report on Form DC-1 shall be signed and (except as provided in this section) verified under oath or affirmation by (1) the individual, if the employer is an individual; (2) the president, vice president or other duly authorized officer, if the employer is a corporation; or (3) a responsible and duly authorized member or officer having knowledge of its affairs if the employer is a partnership or other unincorporated organization.

(b) The oath or affirmation may be administered by any officer duly authorized to administer oaths for general purposes by the laws of the United States or of the state or territory wherein such oath is administered or by a consular officer of the United States.

(c) If the contribution shown to be payable by any contribution report is \$10 or less, the report may be signed or acknowledged before two witnesses instead of under oath.*†

§ 345.8 *Prescribed forms for employers' contribution reports.* Each employer's contribution report, together with any prescribed copies and supporting data, shall be filled out in accordance with the instructions and regulations applicable thereto. The prescribed forms may be obtained from the Board. An employer will not be excused from making a contribution report for the reason that no form has been furnished to such employer. Application should be made to the Board for the prescribed forms in ample time to have the contribution report prepared, verified and filed with the Chief Cashier of the Board on or before the due date. Contribution reports shall be carefully prepared so as to set forth fully and clearly the data called for therein. Contribution reports which have not been so prepared will not be accepted, and the submission thereof shall have no effect whatever. In case the prescribed form has not been obtained, a statement made by the employer disclosing the period covered and the amount of compensation with respect to which the contribution is required may be ac-

cepted as a tentative contribution report if accompanied by the amount of contribution due. If filed within the prescribed time the statement so made will relieve the employer from liability for the penalty imposed for the delinquent filing of the contribution report, provided that the failure to file a contribution report on the prescribed form is not attributable to the fault of the employer, and provided further that without unnecessary delay such tentative report is supplemented by a contribution report made on the proper form.*†

§ 345.9 *Place and time for filing employers' contribution reports.* Each employer's contribution report shall be filed with the Chief Cashier of the Board at Washington, D. C.

The employer's contribution report for each quarterly period shall be filed on or before the last day of the second calendar month following the period for which it is made. If such last day falls on Sunday or a legal holiday, the report may be filed on the next following business day. If placed in the mails, the report shall be posted in ample time to reach the Chief Cashier of the Board at Washington, D. C., under ordinary handling of the mails, on or before the date on which the report is required to be filed.*†

§ 345.10 *Payment of employers' contributions.* The contribution required to be reported on an employer's contribution report is due and payable to the Board without assessment or notice, at the time fixed for filing the contribution report.

Certified or uncertified checks may be tendered as provisional payment of contributions and should be made payable to the Railroad Retirement Board and mailed with the contribution report to the Chief Cashier of the Railroad Retirement Board at Washington, D. C. No employer who tenders a check as provisional payment of contribution shall be released from the obligation to make ultimate payment thereof until such check has been duly paid. If a check is not paid by the bank on which it is drawn, the employer by whom such check has been tendered shall remain liable for the payment of the contribution and for all legal penalties and additions to

†For source citation, see note to § 345.1.

*For statutory citation, see note to § 345.2.

the same extent as if such check had not been tendered.*†

§ 345.11 *When fractional part of cent may be disregarded.* In the payment of employers' contributions to the Board a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more in which case it shall be increased to 1 cent.*†

§ 345.12 *Adjustments*—(a) *In general.* Section 8 (d) of the Act provides that if more or less than the correct amount of employer's contribution is paid with respect to any compensation, proper adjustments with respect to the contribution shall, under regulations prescribed by the Board, be made, without interest, in connection with subsequent contribution payments by the same employer.

(b) *Definitions.* As used in the regulations in this part, the following terms shall have the meanings hereinafter ascribed to them:

(1) "Compensation adjustment" means the amount of any error, as disclosed by a report on Form BA-4, in the employer's report to the Board of the compensation of an individual employee. A compensation adjustment for any month that results in (i) an addition to the amount of creditable compensation for such month previously reported for any employee, or (ii) the crediting of compensation for such month to an employee for whom no compensation had previously been reported for such month, is a "credit compensation adjustment" for such month. A compensation adjustment for any month that results in a deduction from the amount of the creditable compensation for such month previously reported for any employee is a "debit compensation adjustment" for such month. The difference between the total credit compensation adjustments for any month and the total debit compensation adjustments for such month is the "net compensation adjustment" for such month and may be either a "net debit compensation adjustment" or a "net credit compensation adjustment."

(2) "Contribution adjustment" means an amount to be added to or deducted from the contribution payable for a calendar quarter with respect to the total compensation, exclusive of any part in excess of \$300 for any individual in any

one month, as reported on Form BA-5 and Form DC-1 for such quarter, to

(i) Effect payment of contributions with respect to a net credit compensation adjustment for any month subsequent to June 30, 1939, made by the Bureau of Wage and Service Records on the basis of reports on Form BA-4; or to

(ii) Permit the employer to take credit for an overpayment of a previous contribution represented by a net debit compensation adjustment for any month subsequent to June 30, 1939; or to

(iii) Effect payment of any deficiency of any previous contribution, due to error not involving compensation adjustments, in reporting on Form DC-1 the total creditable compensation for a calendar quarter, error in computing the amount of contribution due and payable, or error in making remittance for the contribution due and payable; or to

(iv) Permit the employer to take credit for an overpayment of a previous contribution, due to error not involving compensation adjustments, in reporting on Form DC-1 the total creditable compensation for a calendar quarter, error in computing the amount of contribution due and payable, or error in making remittance for the contribution due and payable.

(c) *Certificates of underpayment and overpayment.* (1) Except as provided in the subparagraph (3) of this paragraph, no adjustments may be made pursuant to the provisions of section 8 (d) of the Act except upon the basis of certificates of underpayment or certificates of overpayment sent to employers by the Board. These certificates will be prepared on the basis of the compensation adjustments reported to the Bureau of Wage and Service Records on Form BA-4 for each month subsequent to June 30, 1939. All such certificates received by employers shall be taken up and accounted for by them in connection with the contribution reports for the quarters in which such certificates were issued, the date appearing on such certificates to be considered the date of issuance; except that certificates of overpayment may be taken up and accounted for at any time within 4 years from the date on which the overpayment was received.

†For source citation, see note to § 345.1.

*For statutory citation, see note to § 345.2.

(2) Certificates of underpayment and certificates of overpayment, based upon compensation adjustments as reported on Form BA-4 or to correct other errors in reporting when such errors are discovered by the Board, will be issued to the employers by the Board on its own initiative. The Board may, however, when the circumstances so warrant, assess the amount of any deficiency in the payment of any contribution, and interest thereon and penalties, and make demand upon the employer for payment thereof, instead of issuing a certificate of underpayment. Any employer, who within 60 days after the due date of a quarterly report of contributions or a report of compensation adjustments, does not receive from the Board a certificate of overpayment to which he believes himself entitled either because of an error in such contribution report or because of a net debit compensation adjustment on such report of compensation adjustments, may make application, setting forth in support thereof all the facts in his possession, for a certificate of overpayment.

(3) A contribution adjustment for any underpayment, not due to a compensation adjustment but discovered by the employer prior to the receipt of a certificate of underpayment with respect thereto, shall be made in the employer's quarterly report of contributions and remittance for the quarter in which the underpayment is discovered, in accordance with the applicable Instructions on the duplicate of Form No. DC-1.

(4) No overpayment shall be adjusted under this section after the expiration of 4 years from the date the overpayment was received by the Board. No underpayment shall be adjusted under this section after the receipt from the Board of formal notice and demand for payment based upon an assessment, but the amount thereof shall be paid to the Board pursuant to such notice and demand.*†

§ 345.13 *Refunds*—(a) *In general.* Section 8 (c) of the Act provides that if more than the correct amount of the employer's contribution is paid with respect to any compensation and the overpayment cannot be adjusted, the amount of the overpayment shall be refunded in

such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations of the Board.

(b) *When permitted.* A claim for refund may be made only when the overpayments cannot be adjusted in accordance with the procedure set forth in § 345.12.

(c) *Form of claim.* A claim for refund shall be made on Form DC-3 in accordance with the instructions and regulations applicable thereto. The prescribed form may be obtained from the Board. There shall be set forth under oath all grounds in detail and all facts alleged in support of the claim, including the amount and date of each payment to the Board of the contribution for which refund is claimed, the name and address of the employer who paid the contribution to the Board, and the period covered by the contribution report on which such contribution was reported.

(d) *Claim by fiduciary.* If any contribution is paid by or on behalf of an individual who thereafter dies and a claim for refund or credit is filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence shall be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver or other fiduciary pays any contribution and thereafter a claim for refund or credit is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, *Provided*, A statement is made in the claim showing that the contribution was paid by the fiduciary and that he is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required but are required to be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary or employer other than the one by whom the contribution was paid, the necessary documentary evidence shall accompany the claim. The affidavit on the claim form may be made by the agent of the employer in whose behalf

†For source citation, see note to § 345.1.

*For statutory citation, see note to § 345.2.

the claim is made, but in such case a power of attorney shall accompany the claim.

(e) *Time limit.* No refund will be allowed for any contribution (including interest or penalty, if any) which has been erroneously, illegally, or otherwise wrongfully collected, after the expiration of 4 years after the payment to the Board of the contribution, penalty or interest, except upon one or more of the grounds set forth in a claim filed therefor prior to the expiration of such 4-year period.*†

§ 345.14 *Assessment and collection of contributions or underpayments of contributions.* If any employer's contribution is not paid to the Board when due or is not paid in full when due, the Board may, as the circumstances warrant assess the contribution or the deficiency and interest and penalty, if any (whether or not the deficiency is adjustable as an underpayment, and whether or not a certificate of underpayment has been issued).

The amount of any such assessment will be collected, in accordance with the applicable provisions of law. If any employer liable to pay any contribution neglects or refuses to pay the same within 10 days after notice and demand, the Board may collect such contribution with such interest and other additional amounts as are required by law, by distraint and sale in the manner provided by law. If any amount or part thereof included in an assessment has been previously reported and paid to the Board as an adjustment or otherwise, the employer against whom the assessment is made is privileged to file with the Board a claim on Form DC-3 for abatement of such amount, together with interest and penalties thereon if included in the assessment.*†

§ 345.15 *Jeopardy assessment.* Whenever in the opinion of the Director of Unemployment Insurance it becomes necessary to protect the interests of the Government by effecting an immediate reporting and collection of an employer's contribution, the Board will assess the contribution, together with all penalties and interest thereon. Upon assessment such contribution, penalty, and interest shall become immediately due and payable, and the Board shall thereupon issue

immediately a notice and demand for payment of the contribution, penalty, and interest.

The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the Board a bond in such amount, not exceeding double the amount with respect to which the stay is desired, and with such sureties as the Board may deem necessary. Such bond shall be conditioned upon the payment of the amount, collection of which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of surety or sureties the employer may deposit with the Board bonds or notes of the United States, or bonds or notes fully guaranteed by the United States as to principal and interest, having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the Board in case of default to collect or sell such bonds or notes so deposited. Upon refusal to pay, or failure to pay or give bond, the Board will immediately upon issuance of notice and demand for payment proceed to collect the contribution, penalty and interest. If any employer liable to pay any contribution neglects or refuses to pay the same within 10 days after notice and demand, the Board may collect such contribution with such interest and other additional amounts as are required by law, by distraint and sale in the manner provided by law.*†

§ 345.16 *Interest.* If the employer's contribution is not paid to the Board when due and is not adjusted under § 345.12, interest accrues at the rate of 1 percent per month, or fraction of a month. Interest on past due contributions from the due date thereof until the date paid will be assessed after payment of the contributions, and notice and demand made upon the employer for payment thereof, in any case in which payment of the contributions is made before assessment under § 345.14 hereof.*†

§ 345.17 *Penalty for failure to pay an assessment after notice and demand.*

(a) In case the employer fails to pay to the Board the entire amount of any assessment of contribution, penalty, or interest within a period of 10 days after the date of issuance of the form for

†For source citation, see note to § 345.1.

*For statutory citation, see note to § 345.2.

first notice and demand, based on such assessment, there accrues (except as provided in (b) of this section) a penalty of 5 percent of the amount of such assessment remaining unpaid at the expiration of such period.

(b) If, within 10 days after the date of issuance of the first notice and demand, a claim for abatement of any amount of the assessment is filed with the Board, the 5 percent penalty does not attach with respect to such amount. If the claim is rejected in whole or in part and the amount rejected is not paid, the Board shall issue notice and demand for such amount. If payment is not made within 10 days after the date the Board issues the notice and demand, the 5 percent penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.*†

§ 345.18 *Liens.* If any employer required to pay a contribution neglects or refuses to pay the same after demand, the amounts (including any interest, penalties, additional amount, or additions to such contribution, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such employer.† (Sec. 8, 52 Stat. 1102, I.R.C. 3670–3679, 53 Stat. 448–451; 45 U.S.C., Sup., 358, 26 U.S.C., Sup., 3670–3679)

§ 345.19 *Penalty for delinquent or false employers' contribution reports—*
(a) *Delinquent reports.* Unless the employer required to file a contribution report establishes to the satisfaction of the Board that a reasonable cause exists for the delinquency, the failure to file such contribution report on or before the due date shall cause to accrue a penalty equal to the following percentage of the contribution required to be reported thereon:

(1) 5 percent, if the contribution report is filed on or before the thirtieth day after the due date;

(2) 10 percent, if the contribution report is filed after such thirtieth day and on or before the sixtieth day after the due date;

(3) 15 percent, if the contribution report is filed after such sixtieth day and on or before the ninetieth day after the due date;

(4) 20 percent, if the contribution report is filed after such 90th day and on or before the one hundred and twentieth day after the due date; or

(5) 25 percent, if the contribution report is filed after such one hundred and twentieth day or if the contribution report is never filed by the employer required to file it.

In computing the period of delinquency all Sundays and holidays after the due date are counted.

Every employer filing a contribution report after the due date shall securely attach to the report a statement under oath setting out in detail the reason for the delinquency. The Board will determine whether a penalty has been incurred and, if so, will make the assessment.

(b) *False reports.* If a false or fraudulent employer's contribution report is wilfully made, the penalty is 50 percent of the total contribution due for the entire period involved, including any contribution previously paid.*†

§ 345.20 *Authorization of contribution adjustments and assessments.* The Director of Unemployment Insurance is authorized, on behalf of the Board, to issue certificates of underpayment, certificates of overpayment, assessments of contributions, interest and penalties, and notices and demands for payment thereof, and will certify, to the Director of Finance, refunds of overpayments.*†

§ 345.21 *References to forms.* Any reference in the regulations in this part to any prescribed reporting or other form of the Board includes a reference to any other form of the Board prescribed in substitution for such prescribed form.† (Sec. 12, 52 Stat. 1107; 45 U.S.C., Sup., 362)

§ 345.22 *Appeals.* Appeals from determinations by employees of the Board with regard to any matter arising under this part may be had in accordance with such regulations as the Board may from time to time prescribe.† (Sec. 12, 52 Stat. 1107; 45 U.S.C., Sup., 362)

†For source citation, see note to § 345.1.

*For statutory citation, see note to § 345.2.